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Friday, February 01, 2008

Borders in the franchise system

Under the franchise philosophy, jurisdictions and other organs of government large and small are property. In a monarchic franchise system ownership of jurisdictional properties tends to be by individuals, whereas in a republican franchise system ownership of such properties tends to be by corporations. There is no such thing as sovereignty or "the" government, but instead a wide variety of property rights to exercise specific political powers that may be bundled, or not, in a wide variety of ways. The rights, duties, powers, and so on of persons in franchise systems are defined in property deeds, often called charters.

In a franchise system, it follows that jurisdictional boundaries are a kind of property boundary. This does not, however, mean that these boundaries should be treated in the same was as the popularly understand generic property in land is treated today. For example, it does not automatically follow that one of their features should be a strict right of exclusion.

Popularly we treat property in land as if it all came in one generic variety, but in fact properties (called in law "estates") can come in a wide variety of forms. There can be estates, sub-estates, and so on. There's no contradiction between having boundaries of larger properties and also having boundaries of smaller properties contained within them. And these boundaries can mean different things depending on the kind of estate involved. A jurisdictional estate can encompass a number of economic estates, for example, and the borders of each have different legal consequences.

There is nothing more important to liberty than reducing exit costs. As Daniel Nagy points out in the debate at this link, this also argues towards reducing entrance costs -- although I do draw a distinction between the two. Restrictions on their residents or guests leaving the property should be highly discouraged, and indeed generally constitute kidnapping. This should apply at any scale. Thus all forms of serfdom and national citizenship with restrictions on emigration that tie people to a territory, whether economic or jurisdictional, are highly destructive of liberty.

The right of an owner to exclude people, on the other hand, should be very high for smaller properties and less so far larger (jurisdictional) properties. A jurisdictional property that restricts entrance also restricts the freedom of association of the jurisdiction's inhabitants. If a family desires to live and raise their children among "their own kind", whatever kind that is, the property policies or deeds that implement these associational preferences should be implement far more at a local level (for example with restrictive property deeds) than at a national level. Thus for example I favor the right to enforce discriminatory covenants on single lots and neighborhoods that the U.S. Supreme Court has struck down under the fraudulent theory that these constitute "government action" and thus violate the Equal Protection Clause. But on the scale of a large "nation" such as the United States, I am for open borders, unless the border restriction is due to a compelling reason of security that cannot be handled on a local scale.

About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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(This text is based on a comment I made in a prior post).

Posted by Nick Szabo at 3:34 PM

Labels: borders, boundaries, emigration, exit costs, franchise, immigration, monarchy, property

4 comments:

ru said...

I favor the right to enforce discriminatory covenants on single lots and neighborhoods

Extremely unlikely to happen in the US wouldn't you say?

10:44 PM

nick said...

Extremely unlikely to happen in the US wouldn't you say?

For the present, yes. But attitudes may well be changing with respect to political correctness. Furthermore, there are related trends, such as the rise of gated communities that desire homogenous cultures, that will put pressure towards local choice and autonomy in deeds and covenants. And there already are some kinds of discriminatory covenants (for example, that forbid selling or renting homes to sex offenders) that would probably be upheld today. Minority communities are strongly asserting their rights to preserve their cultures and ultimately this will set a precedent for all ethnic communiities. After first ignoring discrimination against minorities, and then ignoring discrimination against majorities (e.g. affirmative action), cases such as the recent overturning of affirmative action by the U.S. Supreme Court are now brining the Equal Protection Clause to an ultimately neutral equilibrium. Autonomy demanded by one ethnic community will ultimately be available to all.

Local cultural autonomy via a restoration of property rights, while far from the minds of most judges today, has a firm grounding in traditional property law and is far more likely than legal acceptance of overt discrimination enforced at very large scales such as at national borders. That far more thoroughly violates the Equal Protection Clause, and there are numerous ethnic constituencies within U.S. borders whose associational freedoms and equal protection rights would be severely impacted. They would quite rightly object to such discrimination and I would wholeheartedly agree with them. (If we were talking about an ethnically homogenous area like Japan or Scandinavia the analysis would likely be quite different).

There is a legitimate legal interest in preserving English law and language as the legal standard of the United States, just as there is a legitimate interest in requiring that computers speak Internet protocol before they can participate on the Internet. Maintaining these legal standards can be done by insisting on conducting trials and Congressional floor debates in English, on printing laws and ballots only in English, and in requiring strong English language skills and knowledge of English legal history as prerequisites for U.S. citizenship. None of these are border issues, they are issues of the tradition and integrity of the legal system itself.

Discriminating against certain ethnicities at national borders under the cover of spreading paranoia about terrorism is a disgusting and ultimately losing tactic. (Disgusting not because of racism itself, but disgusting for imposing that racism by force of law on remote strangers and disgusting for what it does to our liberties). People are slowly starting to realize that terrorism is not the huge threat it has been cracked up to be. Look at how well the "Candidate of 9/11", the candidate of paranoia, Rudy Guliani, has fared in the recent primaries for example, and how well the anti-illegal immigrant candidates, Tom Tancredo and Duncan Hunter, have fared. All three sunk like battleships at Pearl Harbor. National security is an important concern but mixing it up with legitimate interests in

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ethnic autonomy in an ethnically heterogenous country like the U.S. is an extremely bad idea.

I thus find the emphasis on restricting immigration across national borders to slow the growing ethnic imbalances to be a severe strategic mistake. That is a losing battle. Growing ethnic imbalances are caused by imbalances in reproduction rates. Restricting immigration does not globally reduce these imbalances. Indeed forcing third world inhabitants to stay in the poverty of their native countries enhances their fertility and thus ultimately exacerbates the imbalances.

The United States is an ethnically and racially heterogenous nation and all kinds of people can, should, and will move freely into and out of it as well as across state lines. To preserve ethnic or genetic identity requires a restoration of property rights, giving greater political power and autonomy to localities, and a restoration of legal authority to families and religious communities.

11:57 AM

Anonymous said...

Thanks for showing exit costs as inversely proportional to freedom. It backs up my instincts of "stop sending the problems to washington, solve them locally".

It also means a little local socialism isn't bad, it can sometimes be more efficient (e.g. city street systems). And if you don't like it, as long as it's small enough socialism you can move. I recently moved from Seattle to a suburb as my children grew to school age, to avoid the socialist nonsense in the Seattle Public Schools.

9:15 PM

nick said...

I recently moved from Seattle to a suburb as my children grew to school age, to avoid the socialist nonsense in the Seattle Public Schools.

A great idea, but with state and national programs (e.g. "No Child Left Behind") this socialism can follow you wherever you go.

And alas, having a family, concentrating social ties within a jurisdiction, investing in real estate, and many other important activities tie one into a particular jurisdiction, to the point where many local bureaucrats can count on these self-imposed Berlin walls to keep the locals under their thumbs.

I don't have great solutions to these dilemmas in mind at the moment, mind you, I'm just pointing out some very unfortunate barriers to liberty. One good thing for those of us in the U.S. -- the right of travel and relocation between states is a fundamental constitutional right here, even if quite unfortunately the right to leave and return the country itself freely would probably not be deemed so by courts.

3:49 PM

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